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94th Congress
2d Session

COMMITTEE PRINT

COMMITTEE PRINT No. 19

MATERIALS ON

H.R. 11804

FEDERAL RAILROAD SAFETY AUTHORIZATION ACT OF 1976

H.R. 11837

TO AMEND THE FEDERAL RAILROAD SAFETY ACT OF 1970
TO AUTHORIZE ADDITIONAL APPROPRIATIONS
HAZARDOUS MATERIALS TRANSPORTATION ACT
INDEPENDENT SAFETY BOARD ACT OF 1974

PREPARED BY THE STAFF

FOR THE USE OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES

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CONTENTS

Page

H.R. 11804 ---
H.R. 11837 ---
Section-by-section summary of H.R. 11804 ---
Executive communication 2463 on railroad safety legislation ---
Changes in existing law:
H.R. 11804 ---
H.R. 11837 ---
Hazardous Materials Transportation Act ---
Executive communication 2388 on hazardous materials transportation ---
Independent Safety Board Act of 1974 ---
Executive communication 1948 on the National Transportation Safety Board ---

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94TH CONGRESS
2D SESSION

H. R. 11804

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 1976

Mr. STAGGERS introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Railroad Safety Authorization Act of 1976".

SEC. 2. (a) Section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

"SEC. 212. AUTHORIZATION FOR APPROPRIATIONS.

"(a) There are authorized to be appropriated to carry out the provisions of this title not to exceed $35,000,000 for the fiscal year ending September 30, 1977.

2

"(b) Except as provided in subsection (c) of this section, amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

"(1) not to exceed $18,000,000 for the Office of Safety, including salaries and expenses for not more than (A) five hundred safety inspectors, (B) forty-five signal and train control inspectors, and (C) 110 clerical personnel;

"(2) not to exceed $3,500,000 to carry out the provisions of section 206(d) of this Act;

"(3) not to exceed $3,500,000 for the Federal Railroad Administration, for salaries and expenses not otherwise provided for; and

"(4) not to exceed $10,000,000 for conducting research and development activities under this Act.

"(c) The aggregate of the amounts obligated and expended for research and development in the fiscal year ending September 30, 1977, shall not exceed the aggregate of the amounts expended for rail inspection and for the investigation and enforcement of railroad safety rules, regulations, orders, and standards under this Act in the same fiscal year.".

SEC. 3. (a) Section 6 of the Act of March 2, 1893 (45 U.S.C. 6), is amended by striking out "$250" and inserting

3

in lieu thereof "not less than $500 and not more than $5,000".

(b) Section 4 of the Act of April 14, 1910 (45 U.S.C. 13) is amended by striking out "$250" and inserting in lieu thereof "not less than $500 and not more than $5,000".

(c) Section 3 of the Act of May 30, 1908 (45 U.S.C. 18) is amended by striking out "$200" and inserting in lieu thereof "not less than $500 and not more than $5,000".

(d) Section 9 of the Act of February 17, 1911 (45 U.S.C. 34) is amended by striking out "$250" and inserting in lieu thereof "not less than $500 and not more than $5,000".

(e) Section 25 (h) of the Interstate Commerce Act (49 U.S.C. 25 (h)) is amended by striking out "$100 for each such violation and $100" and inserting in lieu thereof "not less than $500 and not more than $5,000 for each such violation and not less than $500 and not more than $5,000".

(f) Section 209 (b) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438 (b)) is amended by striking out "$250 nor more than $2,500" and inserting in lieu thereof "$500 and not more than $5,000".

SEC. 4. Section 2 (a) of the Act of March 4, 1907 (45 U.S.C. 62 (a)), is amended—

4

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) not to provide employees with sleeping quarters, including crew quarters, camp or bunk cars, and trailers, which (A) provide employees with an opportunity for uninterrupted rest in quarters having controlled temperatures, and (B) are located away from a yard where switching or humping is performed.".

SEC. 5. Section 2(c) of the Act of March 4, 1907 (45 U.S.C. 62(c)), is amended to read as follows:

"(c) The provisions of this Act shall not apply to the members of crews of wreck or relief trains whenever an actual emergency exists and work of the crew is related to such emergency, except that in any event it shall be unlawful for crew members of wreck or relief trains to be required or permitted to work more than sixteen consecutive hours in any twenty-four-hour period. For the purpose of this paragraph, an emergency ceases to exist when the track is cleared and the line is open for traffic.".

SEC. 6. Section 202 of the Federal Railroad Safety Act

5

of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following new subsections:

"(g) Notwithstanding any provision of law or regulation to the contrary, the following requirements shall be applicable for purposes of providing protection against following and opposing trains:

"(1) Whenever a train stops under circumstances in which such train may be overtaken by another train, protection by means of flagging shall be provided by a member of the crew. To provide such protection, such a crew member shall, at a sufficient distance from the stopped train to assure full protection (A) place two torpedoes on the track, and (B) whenever necessary, display lighted fusees. In providing such protection, such crew member shall carry a red flag by day and a red or white light, or both, at night.

"(2) Upon being recalled and whenever safety to the train permits, such crew member may return to the train.

"(3) Whenever conditions require, such crew member shall leave such torpedoes and a lighted fusee.

"(4) The front of such train shall be protected in the same way, whenever necessary, by a member of the crew.

6

"(5) Whenever a train is moving under circumstances in which it may be overtaken by another train, a member of the crew shall take such action as may be necessary to insure full protection. By night (or by day, if the view is obscured), lighted fusees shall be dropped from the moving train or displayed at proper intervals.

"(6) Whenever day signals cannot be plainly seen, because of weather or other conditions, night signals shall also be used.

"(7) Whenever a pusher engine is assisting a train, coupled behind the cabin or caboose car, and the member of the crew who protects the rear end of such train is riding in the cabin or caboose car, the requirements with respect to fusees may be met by dropping such fusee between the cabin or caboose car and the pusher engine on the track such train is using, and not between such track and an adjacent track.

"(h) Notwithstanding any provision of law or regulation to the contrary, the following protection shall be provided for all employees working on, under, or about an engine, car, or train:

"(1) A blue signal, displayed at both ends of an engine, car, or train shall indicate that workmen are under or about such engine, car, or train. Whenever an engine, car, or train is protected by such a blue signal,

7

it shall not be coupled to or moved. Each class of workmen shall display the blue signals and the same workmen are alone authorized to remove such signals. Other equipment shall not be placed on the same track so as to obstruct the view of the blue signals.

"(2) Blue signals shall consist of a blue light by night and a blue flag or marker by day.

"(3) Whenever emergency repair work is done under or about an engine or car in a train and a blue signal is not available, the engineman shall be notified and protection shall be given to those persons engaged in making repairs.

"(4) Workmen shall not work under or about cars being switched into a hump yard track or any other track until they are notified by the hump operator or person controlling the switching that no more cars will enter the track and that switches have been locked against movement onto the track by warning shields or padlocks.

"(5) In the case of manual switches, locks may be applied by switchmen or road crewmen bringing the engine to the train. The hump operator may apply a protective shield to a remotely controlled switch and remove it after work is completed and the blue signals are removed.

8

"(6) Blue signals shall be displayed at both ends of a train or cut of cars receiving an initial or other train air brake test until such test is completed and they are removed by the class of workmen performing such test.

"(i) Notwithstanding any provision of law or regulation to the contrary, the rear car of all passenger and freight trains shall have highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility.

"(j) The Federal Railroad Administration shall be divided into ten regional offices for purposes of administering and enforcing all Federal railroad safety laws. Such regional offices shall be under the direct control of the Associate Administrator for Safety of the Federal Railroad Administration.".

94TH CONGRESS
2D SESSION

H. R. 11837

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1976

Mr. STAGGERS (for himself and Mr. DEVINE) (by request) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 212 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441) is amended to read as follows:

"SEC. 212. AUTHORIZATION FOR APPROPRIATIONS.

"There are authorized to be appropriated to carry out the provisions of this title not to exceed $35,000,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978.".

I

SECTION-BY-SECTION SUMMARY OF H.R. 11804

Section 1

Provides for short title of "Federal Railroad Safety Authorization Act of 1976."

Sections 2 (a) and (b)

This section authorizes the same amount of funds that was authorized by Congress for fiscal year 1976, $35 million. The total amount authorized is specifically allocated for particular purposes and also is the same as provided in the fiscal year 1976 authorization. The funds are allocated as follows:

(1) Not in excess of $18 million for safety inspection and enforcement activities, including salaries and expenses for up to 500 safety inspectors and 110 clerical personnel. There is earmarked a requirement authorizing FRA to hire up to 45 signal and train control inspectors.

(2) Not in excess of $3.5 million matching funds for States.

(3) Not in excess of $3.5 million for salaries and expenses of the Federal Railroad Administration not otherwise provided for.

(4) Not in excess of $10 million for safety research and development.

Section 2(c)

There is a proviso, repeated from fiscal year 1976 authorization, restricting the funds expended for safety research and development not to exceed the amount spent on safety inspection and enforcement activities.

Section 3

This section increases the penalties under the existing safety laws to not less than $500 and not more than $5,000. The Hours of Service Act and the hazardous materials laws are not amended.

Section 4

This section requires the railroads to provide employees with lodging quarters that will allow the employees to receive uninterrupted rest and shall be located away from a yard where switching or bumping is performed.

Section 5

This section clarifies the Hours of Service Act by stating that the exemption for crews on wreck trains is applicable only during the period of time when the emergency exists and until the track is cleared and open for traffic. A proviso is added prohibiting a wreck train crew from working in excess of 16 consecutive hours in any 24-hour period.

Section 6

This section adds several new subsections to Section 202 of the Federal Railroad Safety Act of 1970 as follows:

The new subsection (g) adopts into law a flag protection rule against following and opposing trains which is generally known in the industry as "Rule 9955". There are many variations of the rule, and this would bring about improved safety and uniformity.

The new subsection (h) adopts a so-called blue flag-blue light rule for the protection of employees working on, under, or about an engine, car or train. It requires either a light or flag at a track where employees are inspecting and repairing cars and requires the switches to be locked to protect against movement into the said track.

The new subsection (i) requires highly visible markers which are lighted in darkness and in bad weather conditions to be placed on the end car of all passenger and freight trains.

The new subsection (j) requires the FRA to be divided into ten regional offices, which offices shall be under the direct control of the Associate Administrator for Safety.

EXECUTIVE COMMUNICATION 2463

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JAN 30 1976

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is transmitted herewith a proposed bill

"To amend the Federal Railroad Safety Act of 1970 to authorize additional appropriations."

Authorization for appropriations to fund the rail safety program under the Federal Railroad Safety Act of 1970 expires September 30, 1976. This proposed bill would extend authorization for appropriations for the Department's rail safety program for fiscal years 1977 and 1978.

Promoting, improving and enforcing rail safety is a continuing task. Section 202 of the Rail Safety Improvement Act of 1974 (Title II of P.L. 93-633) provides:

> "The Congress finds that more effective realization of the purposes of the Federal Railroad Safety Act of 1970 requires that Act to be amended to mandate comprehensive analysis and evaluation of the rail safety program, to increase the amount and percentage of available resources for inspection, investigation, and enforcement, and to increase the enforcement powers of the Secretary of Transportation."

Pursuant to this declaration of policy, the Federal Railroad Administration (FRA) has continued to expand its regulatory and enforcement efforts. The FRA has revised its Accident Reports regulations to improve its analysis of the level of rail safety. New safety rules have been proposed with respect to passenger train visibility. The FRA has established a

66-656 O - 76 - 3

Railroad Operating Rules Advisory Committee to study the impact of operating rules, signal systems and human factors on the relative level of rail safety. Further, the state participation program under section 206 of the Act has been substantially implemented with respect to the initial standards promulgated under the Act. As of December, 1975, 10 States are participating in this program in the track area. Seven applications for participation are under review, and discussions are being held with five other States which have expressed an intent to participate. Regulations dealing with certain aspects of the transportation of hazardous materials have been issued, and proposed rules designed to cover railroad occupational safety standards are being developed.

In order to improve our rail safety program and to combat increasing numbers of employee injuries, FRA is now developing, through a number of studies, both a short-term action plan and a longer-range plan to provide a basis for directing the Federal safety program. These studies will provide the basis for reviewing our current approach to the safety problem and setting new goals and policies. To maximize our safety efforts within available resources, we are undertaking the following actions pursuant to the recently adopted Safety Improvement Plan:

(1) continuing inspection and surveillance efforts to insure that all carriers are properly reporting accidents and operating in compliance with our regulations;

(2) focusing our major enforcement efforts on the ten target railroads having the poorest safety records;

(3) increasing the enforcement powers of our inspectors to enable them to remove unsafe cars from service and reduce speeds on defective track;

(4) utilizing more sophisticated track inspection equipment;

(5) investigating operating procedures and conditions of safely operated railroads for purposes of comparison with railroads with poor safety records;

(6) developing better training materials to improve understanding of Federal safety requirements;

(7) improving procedures for investigating complaints;

(8) reviewing employee casualty statistics to identify the problem areas;

(9) developing qualification standards for railroad inspectors to insure that they have the knowledge and ability to inspect track and equipment for compliance with Federal requirements; and

(10) reviewing regional boundaries to determine whether a more equitable distribution of areas of responsibility can be achieved.

The importance of the railroad industry as a transporter of freight and passengers requires a continuing effort to promote railroad safety. Accordingly, the enclosed draft bill 1/ would authorize the appropriation of $35 million in each of the fiscal years 1977 and 1978 for operations under the Federal Railroad Safety Act of 1970.

The proposed legislation will not have an adverse impact on the environment nor will it have an inflationary impact on the economy.

The Office of Management and Budget advises that the submission of this proposed bill to the Congress is consistent with the President's program.

Sincerely,

William T. Coleman, Jr.

1/ The draft bill was introduced on February 10, 1976, as H.R. 11837 and appears on page 9 of this print.

CHANGES IN EXISTING LAW

CHANGES IN EXISTING LAW MADE BY H.R. 11804, AS INTRODUCED

For the information of the members of the committee, the Federal Railroad Safety Act of 1970, together with amendments to such Act made by H.R. 11804, as introduced, is shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL RAILROAD SAFETY ACT OF 1970

TITLE II—RAILROAD SAFETY

Sec. 201. Short Title.

This title may be cited as the "Federal Railroad Safety Act of 1970".

Sec. 202. Rail Safety Regulations.

(a) The Secretary of Transportation (hereafter in this title referred to as the "Secretary") shall (1) prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety supplementing provisions of law and regulations in effect on the date of enactment of this title, and (2) conduct, as necessary, research, development, testing, evaluation, and training for all areas of railroad safety. However, nothing in this title shall prohibit the bargaining representatives of common carriers and their employees from entering into collective bargaining agreements under the Railway Labor Act, including agreements relating to qualifications of employees, which are not inconsistent with rules, regulations, orders, or standards prescribed by the Secretary under this title. Nothing in this title shall be construed to give the Secretary authority to issue rules, regulations, orders, and standards relating to qualifications of employees, except such qualifications as are specifically related to safety.

(b) Hearings shall be conducted in accordance with the provisions of section 553 of title 5 of the United States Code for all rules, regulations, orders, or standards issued by the Secretary including those establishing, amending, revoking, or waiving compliance with a railroad safety rule, regulation, order, or standard under this title, and an opportunity shall be provided for oral presentations.

(c) The Secretary may, after hearing in accordance with subsection (b) of this section, waive in whole or in part compliance with any rule, regulation, order, or standard established under this title, if he determines that such waiver of compliance is in the public interest and is consistent with railroad safety. The Secretary shall make public his reasons for granting any such waiver.

(d) In prescribing rules, regulations, orders, and standards under this section the Secretary shall consider relevant existing safety data and standards.

(e) The Secretary shall issue initial railroad safety rules, regulations, orders, and standards under this title based upon existing safety data and standards, not later than one year after the date of enactment of this title. The Secretary shall review and, after hearing in accordance with subsection (b) of this section, revise such rules, regulations, orders, and standards as necessary.

(f) Any final agency action taken under this section is subject to judicial review as provided in chapter 7 of title 5 of the United States Code.

(g) Notwithstanding any provision of law or regulation to the contrary, the following requirements shall be applicable for purposes of providing protection against following and opposing trains:

(1) Whenever a train stops under circumstances in which such train may be overtaken by another train, protection by means of flagging shall be provided by a member of the crew. To provide such protection, such a crew member shall, at a sufficient distance from the stopped train to assure full protection (A) place two torpedoes on the track, and (B) whenever necessary, display lighted fuses. In providing such protection, such crew member shall carry a red flag by day and a red or white light, or both, at night.

(2) Upon being recalled and whenever safety to the train permits, such crew member may return to the train.

(3) Whenever conditions require, such crew member shall leave such torpedoes and a lighted fusee.

(4) The front of such train shall be protected in the same way, whenever necessary, by a member of the crew.

(5) Whenever a train is moving under circumstances in which it may be overtaken by another train, a member of the crew shall take such action as may be necessary to insure full protection. By night (or by day, if the view is obscured), lighted fusees shall be dropped from the moving train or displayed at proper intervals.

(6) Whenever day signals cannot be plainly seen, because of weather or other conditions, night signals shall also be used.

(7) Whenever a pusher engine is assisting a train, coupled behind the cabin or caboose car, and the member of the crew who protects the rear end of such train is riding in the cabin or caboose car, the requirements with respect to fusees may be met by dropping such fusee between the cabin or caboose car and the pusher engine on the track such train is using, and not between such track and an adjacent track.

(h) Notwithstanding any provision of law or regulation to the contrary, the following protection shall be provided for all employees working on, under, or about an engine, car, or train:

(1) A blue signal, displayed at both ends of an engine, car, or train shall indicate that workmen are under or about such engine, car, or train. Whenever an engine, car, or train is protected by such a blue signal, it shall not be coupled to or moved. Each class of workmen shall display the blue signals and the same

workmen are alone authorized to remove such signals. Other equipment shall not be placed on the same track so as to obstruct the view of the blue signals.

(2) Blue signals shall consist of a blue light by night and a blue flag or marker by day.

(3) Whenever emergency repair work is done under or about an engine or car in a train and a blue signal is not available, the engineman shall be notified and protection shall be given to those persons engaged in making repairs.

(4) Workmen shall not work under or about cars being switched into a hump yard track or any other track until they are notified by the hump operator or person controlling the switching that no more cars will enter the track and that switches have been locked against movement onto the track by warning shields or padlocks.

(5) In the case of manual switches, locks may be applied by switchmen or road crewmen bringing the engine to the train. The hump operator may apply a protective shield to a remotely controlled switch and remove it after work is completed and the blue signals are removed.

(6) Blue signals shall be displayed at both ends of a train or cut of cars receiving an initial or other train air brake test until such test is completed and they are removed by the class of workmen performing such test.

(i) Notwithstanding any provision of law or regulation to the contrary, the rear car of all passenger and freight trains shall have highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility.

(j) The Federal Railroad Administration shall be divided into ten regional offices for purposes of administering and enforcing all Federal railroad safety laws. Such regional offices shall be under the direct control of the Associate Administrator for Safety of the Federal Railroad Administration.

Sec. 203. Emergency Powers.

If through testing, inspection, investigation, or research carried out pursuant to this title, the Secretary determines that any facility or piece of equipment is in unsafe condition and thereby creates an emergency situation involving a hazard of death or injury to persons affected by it, the Secretary may immediately issue an order, without regard to the provisions of section 202(b) of this title, prohibiting the further use of such facility or equipment until the unsafe condition is corrected. Subsequent to the issuance of such order, opportunity for review shall be provided in accordance with section 554 of title 5 of the United States Code.

Sec. 204. Grade Crossings and Railroad Rights-of-Way.

(a) The Secretary shall submit to the President for transmittal to the Congress, within one year after the date of enactment of this title, a comprehensive study of the problem of eliminating and protecting railroad grade crossings, including a study of measures to protect pedestrians in densely populated areas along railroad rights-of-way together with his recommendations for appropriate action including,

if relevant, a recommendation for equitable allocation of the economic costs of any program proposed as a result of such study.

(b) In addition the Secretary shall, insofar as practicable, under the authority provided by this title and pursuant to his authority over highway, traffic, and motor vehicle safety, and highway construction, undertake a coordinated effort toward the objective of developing and implementing solutions to the grade crossing problem, as well as measures to protect pedestrians in densely populated areas along railroad rights-of-way.

Sec. 205. State Regulation.

The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

Sec. 206. State Participation.

(a) A State may participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order, or standard prescribed by the Secretary under this title if the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within such State are regulated by a State agency and such State agency submits to the Secretary an annual certification that such State agency—

(1) has regulatory jurisdiction over the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within the State concerned;

(2) has been furnished a copy of each Federal safety rule, regulation, order, and standard, applicable to any such railroad facility, equipment, rolling stock, or operation, established under this title as of the date of the certification;

(3) is conducting the investigative and surveillance activities prescribed by the Secretary as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary.

The Secretary shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by section 207 of this title) to request injunctive relief for the violation of rules, regulations, orders, and standards prescribed by the Secretary under section 202(a) of this title and to recommend appropriate action as provided by sections 209 and 210 of this title.

(b) Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing—

(1) the name and address of each railroad subject to the safety jurisdiction of the State agency;

(2) all accidents or incidents reported during the preceding twelve months by each such railroad involving personal injury requiring hospitalization, fatality, or property damage exceeding $750 or such other higher amount as the Secretary may prescribe, together with a summary of the State agency's investigation as to the cause and circumstances surrounding each such accident or incident;

(3) the record maintenance, reporting, and inspection practices conducted by the State agency to aid the Secretary in his enforcement of rules, regulations, orders, and standards prescribed by him under section 202(a) of this title, including a detail of the number of inspections made of rail facilities, equipment, rolling stock, and operations by the State agency during the preceding twelve months; and

(4) such other information as the Secretary may require.

The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification the Secretary determines that the State agency is not satisfactorily complying with the investigative and surveillance activities prescribed by him with respect to such safety rules, regulations, orders, and standards, he may, on reasonable notice and after opportunity for hearing, reject the certification, in whole or in part, or take such other action as he deems appropriate to achieve adequate enforcement. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily complying with the investigative and surveillance activities prescribed by the Secretary with respect to such safety rules, regulations, orders, and standards.

(c) With respect to any railroad facility, equipment, rolling stock, or operation for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may enter into an agreement with a State agency to authorize such agency to provide all or any part of the investigative and surveillance activities prescribed by the Secretary as necessary to obtain compliance with any Federal safety rule, regulation, order, or standard applicable to any such railroad facility, equipment, rolling stock, or operation. An agreement entered into under this subsection, or any provision thereof, may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to provide all or any part of the investigative and surveillance activities to which the agreement relates. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

(d) Upon application by any State agency which has submitted a certification under subsection (a) of this section, or entered into an agreement under subsection (c) of this section, the Secretary shall pay, out of funds appropriated pursuant to this title or otherwise made available, up to 50 per centum of the cost of the personnel, equipment, and activities of such State agency reasonably required, during the ensuing fiscal year, to carry out a safety program under such certification or agreement. No such payment may be made unless the State agency making application under this subsection given assurances

satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for the safety program will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding the date of enactment of this title.

(e) The Secretary is authorized to conduct such monitoring of State investigative and surveillance practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this title.

(f) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, order, or standard for railroads established under this title after the date of such certification until the State agency has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section to provide the necessary inspection and surveillance activities in accordance with the provisions of such subsection.

Sec. 207. Enforcing Compliance With Federal Railroad Safety Rules, Regulations, Orders, and Standards.

In any case in which the Secretary has failed to assess the civil penalty applicable under section 209 of this title, or no civil action has been commenced to obtain injunctive relief under section 210 of this title, with respect to a violation of any railroad safety rule, regulation, order, or standard issued under this title, within 90 days after the date on which such violation occurred, a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title within the State where the violation occurred, may apply to the district court of the United States within the jurisdiction of which the violation occurred for the enforcement of such rule, regulation, order, or standard. The court shall have jurisdiction to enforce compliance with such rule, regulation, order, or standard by injunction or other proper process to restrain further violation thereof, or to enjoin compliance therewith, or to assess and collect the civil penalty included in or made applicable to such rule, regulation, order, or standard. The provisions of this section shall not apply in any case in which the Secretary has affirmatively determined, in writing, that no violation has occurred.

Sec. 208. General Powers.

(a) In carrying out his functions under this title, the Secretary is authorized to perform such acts including, but not limited to, conducting investigations, making reports, issuing subpenas, requiring production of documents, taking depositions, prescribing recordkeeping and reporting requirements, carrying out and contracting for research, development, testing, evaluation, and training (particularly with respect to those aspects of railroad safety which he finds to be in need of prompt attention), and delegating to any public bodies or qualified persons, functions respecting examination, inspecting, and testing of railroad facilities, equipment, rolling stock, operations, or persons, as he deems necessary to carry out the provisions of this title. The Secretary is further authorized to issue orders directing compliance with

66-656 O - 76 - 4

this Act or with any railroad safety rule, regulation, order, or standard issued under this Act; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) The National Transportation Safety Board shall have the authority to determine the cause or probable cause and report the facts, conditions and circumstances relating to accidents investigated under subsection (a) of this section, but may delegate such authority to any office or official of the Board or to any office or official of the Department of Transportation with the approval of the Secretary, as it may determine appropriate.

(c) To carry out the Secretary's and the Board's responsibilities under this title, officers, employees, or agents of the Secretary or the Board, as the case may be, are authorized to enter upon, inspect, and examine rail facilities, equipment, rolling stock, operations, and pertinent records at reasonable times and in a reasonable manner. Such officers, employees, or agents shall display proper credentials when requested.

(d) All orders, rules, regulations, standards, and requirements in force, or prescribed or issued by the Secretary under this title, or by any State agency which is participating in investigative and surveillance activities pursuant to section 206 of this title, shall have the same force and effect as a statute for purposes of the application of sections 3 and 4 of the Act of April 22, 1908 (45 U.S.C. 53 and 54), relating to the liability of common carriers by railroad for injuries to their employees.

Sec. 209. Penalties.

(a) It shall be unlawful for any railroad to disobey, disregard, or fail to adhere to any rule, regulation, order, or standard prescribed by the Secretary under this title.

(b) The Secretary shall include in, or make applicable to, any railroad safety rule, regulation, order, or standard issued under this title a civil penalty for violation thereof or for violation of section 2 of the Act of May 6, 1910 (45 U.S.C. 39) in such amount, not less than [$250 nor more than $2,500] *$500 and not more than $5,000* as he deems reasonable.

(c) Any railroad violating any rule, regulation, order, or standard referred to in subsection (b) of this section shall be assessed by the Secretary the civil penalty applicable to the standard violated. Each day of such violation shall constitute a separate offense. Such civil penalty is to be recovered in a suit or suits to be brought by the Attorney General on behalf of the United States in the district court of the United States having jurisdiction in the locality where such violation occurred. Civil penalties may, however, be compromised by the Secretary for any amount, but in no event for an amount less than the minimum provided in subsection (b) of this section, prior to referral to the Attorney General. The amount of any such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged. All penalties collected under this title, including penalties collected pursuant to section 207 of this title, shall be covered into the Treasury as miscellaneous receipts.

(d) In any action brought under this title, subpenas for witnesses who are required to attend a United States district court may run into any other district.

Sec. 210. Injunctive Relief.

(a) The United States district court shall, at the request of the Secretary and upon petition by the Attorney General on behalf of the United States, or upon application by a State agency pursuant to section 207 of this title, have jurisdiction, subject to the provisions of rules 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this title or to enforce rules, regulations, orders, or standards established under this title.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section or under section 207 of this title, which violation also constitutes a violation of this title, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

Sec. 211. Annual Report.

(a) The Secretary shall prepare and submit to the President for transmittal to Congress on or before May 1 of each year a comprehensive report on the administration of this title for the preceding calendar year. Such report shall include, but not be restricted to—

(1) a thorough statistical compilation of the accidents and casualties by cause occurring in such year;

(2) a list of Federal railroad safety rules, regulations, orders, and standards issued under this title in effect or established in such year;

(3) a summary of the reasons for each waiver granted under section 202(c) of this title during such year;

(4) an evaluation of the degree of observance of applicable railroad safety rules, regulations, orders, and standards issued under this title;

(5) a summary of outstanding problems confronting the administration of Federal railroad safety rules, regulations, orders, and standards issued under this title in order of priority;

(6) an analysis and evaluation of research and related activities completed (including the policy implications thereof) and technological progress achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions for the enforcement of any Federal railroad safety rule, regulation, order, or standard issued under this title;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies under section 206(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 206(a) of this title which were rejected, in whole or in part, by the Secretary

during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) compilation of—

(A) agreements entered into with State agencies under section 206(c) of this title which were in effect during the preceding calendar year, and

(B) agreements entered into under section 206(c) of this title which were terminated by the Secretary, in whole or in part, during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to strengthen the national railroad safety program.

(c) SPECIAL REPORT.—The Secretary shall prepare and submit to the President and the Congress, not later than March 17, 1976, a comprehensive railroad safety report. Such report shall—

(1) contain a description of the areas of railroad safety with respect to which Federal safety standards issued under this Act are in effect (as of June 30, 1975);

(2) identify any area of railroad safety with respect to which Federal safety standards have been proposed but have not been issued under this Act (as of June 30, 1975);

(3) identify any area of railroad safety with respect to which Federal safety standards have not been issued under this Act (as of June 30, 1975);

(4) identify alternative and more cost-effective methods for inspection and enforcement of Federal safety standards, including mechanical and electronic inspection, and contain an evaluation of problems involved in implementing such alternatives, with specific attention to the need for cooperation with the railroad industry;

(5) identify the areas of railroad safety listed in accordance with paragraphs (1) through (3) of this subsection which involve, or which may involve, State participation under section 206 of this Act;

(6) contain a description of the railroad safety program which is in effect or planned in each State (as of June 30, 1975), including—

(A) State program development;

(B) State plans to participate in program areas listed in accordance with paragraph (1) of this subsection, which are not covered by a State certification or agreement;

(C) State interest in participating in each program area listed in accordance with paragraphs (2) and (3) of this subsection, following issuance of the applicable safety standards;

(D) annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out its State program during each fiscal year from 1976 through 1980 together with estimates of the annual costs

thereof separately stated as to projections under subparagraphs (B) and (C) of this paragraph;

(E) the sources from which the State expects to draw the funds to finance such programs; and

(F) the amount of State funds and of Federal financial assistance needed during each such fiscal year, by category;

(7) contain a detailed analysis of (A) the number of safety inspectors needed (by industry and Government respectively) to maintain an adequate and reasonable railroad safety program and record; (B) the minimum training and other qualifications needed for each such inspector; (C) the present and projected availability of such personnel in comparison to the need therefor; (D) the salary levels of such personnel in relation to salary levels for comparable positions in industry, State governments, and the Federal Government;

(8) evaluate alternative methods of allotting Federal funds among the States applying for Federal financial assistance, including recommendations, if needed, for a formula for such apportionment;

(9) contain a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies, in the nationwide railroad safety program;

(10) contain a description of the regulations and handling criteria established by the Secretary under the Hazardous Materials Transportation Act specifically applicable to the transportation of radioactive materials by railroad (as of June 30, 1975), together with annual projections of the amounts of radioactive materials reasonably expected to be transported by railroad during each fiscal year from 1976 through 1980 and an evaluation of the need for additional regulations and handling criteria applicable to the transportation of radioactive materials by railroad during each such fiscal year; and

(11) contain recommendations for any additional Federal and State legislation needed to further realization of the objectives of this Act.

Such report shall be prepared by the Secretary, directly or indirectly, after research, examination, study, and consultation with the national associations representing railroad employee unions, railroad management, cooperating State agencies, the national organization of State commissions, universities, and other persons having special expertise or experience with respect to railroad safety. Such report shall include, in an appendix, a statement of the views of the national associations representing railroad employee unions, of the carriers, and of the national organization of State commissions with respect to the content of such report in its final form.

Sec. 212. Authorization for Appropriations.

(a) There are authorized to be appropriated to carry out the provisions of this title not to exceed $35,000,000 for the fiscal year ending [June 30, 1976; and not to exceed $8,750,000 for the transition period of July 1, 1976, through September 30, 1976 (hereafter in this section referred to as the "transition period")] *September 30, 1977.*

(b) Except as [otherwise] provided in subsection (c) of this section, amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

[(1) For the Office of Safety, including salaries and expenses for up to 500 safety inspectors and up to 110 clerical personnel, not to exceed $18,000,000 for the fiscal year ending June 30, 1976; and not to exceed $4,500,000 for the transition period.

[(2) To carry out the provisions of section 206(d) of this title, not to exceed $3,500,000 for the fiscal year ending June 30, 1976; and not to exceed $875,000 for the transition period.

[(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000 for the fiscal year ending June 30, 1976; and not to exceed $875,000 for the transition period.

[(4) For conducting research and development activities under this title, not to exceed $10,000,000 for the fiscal year ending June 30, 1976; and not to exceed $2,500,000 for the transition period.]

(1) not to exceed $18,000,000 for the Office of Safety, including salaries and expenses for not more than (A) five hundred safety inspectors, (B) forty-five signal and train control inspectors, and (C) 110 clerical personnel;

(2) not to exceed $3,500,000 to carry out the provisions of section 206(d) of this Act;

(3) not to exceed $3,500,000 for the Federal Railroad Administration, for salaries and expenses not otherwise provided for; and

(4) not to exceed $10,000,000 for conducting research and development activities under this Act.

(c) The aggregate of the amounts obligated and expended for research and development [under this title] in the fiscal year ending [June 30, 1976, and in the transition period] *September 30, 1977*, shall not exceed the aggregate of the amounts expended for rail inspection and for the investigation and enforcement of railroad safety rules, regulations, orders, and standards under this [title in such fiscal year, and in the transition period, respectively] *Act in the same fiscal year.*

Changes in Existing Law Made by H.R. 11837, as Introduced

For the information of the members of the committee, the Federal Railroad Safety Act of 1970, together with amendments to such Act made by H.R. 11837, as introduced, is shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Section 212 of the Federal Railroad Safety Act of 1970

[Sec. 212. Authorization for Appropriations.

[(a) There are authorized to be appropriated to carry out the provisions of this title not to exceed $35,000,000 for the fiscal year ending June 30, 1976; and not to exceed $8,750,000 for the transition period of July 1, 1976, through September 30, 1976 (hereafter in this section referred to as the "transition period").

[(b) Except as otherwise provided in subsection (c) of this section amounts appropriated under subsection (a) of this section shall be available for expenditure as follows:

[(1) For the Office of Safety, including salaries and expenses for up to 500 safety inspectors and up to 110 clerical personnel, not to exceed $18,000,000 for the fiscal year ending June 30, 1976; and not to exceed $4,500,000 for the transition period.

[(2) To carry out the provisions of section 206(d) of this title, not to exceed $3,500,000 for the fiscal year ending June 30, 1976; and not to exceed $875,000 for the transition period.

[(3) For the Federal Railroad Administration, for salaries and expenses not otherwise provided for, not to exceed $3,500,000 for the fiscal year ending June 30, 1976; and not to exceed $875,000 for the transition period.

[(4) For conducting research and development activities under this title, not to exceed $10,000,000 for the fiscal year ending June 30, 1976; and not to exceed $2,500,000 for the transition period.

[(c) The aggregate of the amounts obligated and expended for research and development under this title in the fiscal year ending June 30, 1976, and in the transition period, shall not exceed the aggregate of the amounts expended for rail inspection and for the investigation and enforcement of railroad safety rules, regulations, orders, and standards under this title in such fiscal year, and in the transition period, respectively.]

Sec. 212. Authorization for Appropriations.

There are authorized to be appropriated to carry out the provisions of this title not to exceed $35,000,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978.

HAZARDOUS MATERIALS TRANSPORTATION ACT

Public Law 93-633
93rd Congress, H. R. 15223
January 3, 1975

An Act

88 STAT. 2156

To regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Safety Act of 1974". Transportation Safety Act of 1974. 49 USC 1801 note.

TITLE I—HAZARDOUS MATERIALS

SHORT TITLE

SEC. 101. This title may be cited as the "Hazardous Materials Transportation Act". Hazardous Materials Transportation Act. 49 USC 1801 note.

DECLARATION OF POLICY

SEC. 102. It is declared to be the policy of Congress in this title to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce. 49 USC 1801.

DEFINITIONS

SEC. 103. As used in this title, the term— 49 USC 1802.

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "Secretary" means the Secretary of Transportation, or his delegate;

(4) "serious harm" means death, serious illness, or severe personal injury;

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

(6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

(7) "United States" means all of the States.

DESIGNATION OF HAZARDOUS MATERIALS

SEC. 104. Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases. 49 USC 1803.

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

49 USC 1804.

SEC. 105. (a) GENERAL.—The Secretary may issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) REPRESENTATION.—No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act.

HANDLING OF HAZARDOUS MATERIALS

49 USC 1805.

SEC. 106. (a) CRITERIA.—The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) REGISTRATION.—Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section.

The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) REQUIREMENT.—No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped extremely hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of extremely hazardous materials, unless he has on file a registration statement.

EXEMPTIONS

SEC. 107. (a) GENERAL.—The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this title in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

49 USC 1806.

Publication in Federal Register.

(b) VESSELS.—The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this title, any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section (46 U.S.C. 391a(2)), or any other vessel regulated under such Act, to the extent of such regulation.

Exclusion.

(c) FIREARMS AND AMMUNITION.—Nothing in this title, or in any regulation issued under this title, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) LIMITATION ON AUTHORITY.—Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this title may be exempted from or relieved of the obligation to meet any requirements imposed under this title.

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING AIRCRAFT

Regulations. 49 USC 1807.

SEC. 108. (a) GENERAL.—Within 120 days after the date of enactment of this section, the Secretary shall issue regulations, in accordance with this section and pursuant to section 105 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 101(4) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(4)). Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) DEFINITION.—As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.

POWERS AND DUTIES OF THE SECRETARY

49 USC 1808.

SEC. 109. (a) GENERAL.—The Secretary is authorized, to the extent necessary to carry out his responsibilities under this title, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this title or regulations issued under this title; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

Notice, hearing opportunity.

Jurisdiction.

(b) RECORDS.—Each person subject to requirements under this title shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) INSPECTION.—The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) FACILITIES AND DUTIES.—The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) ANNUAL REPORT.—The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation of hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to— Report to President, transmittal to Congress. Contents.

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;

(5) a summary of outstanding problems confronting the administration of this title, in order of priority; and

(6) such recommendations for additional legislation as are deemed necessary or appropriate.

PENALTIES

SEC. 110. (a) CIVIL.—(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this title or of a regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than $10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. 49 USC 1809.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) CRIMINAL.—A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both.

SPECIFIC RELIEF

49 USC 1810.

SEC. 111. (a) GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this title, or an order or regulation issued under this title. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) IMMINENT HAZARD.—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an "imminent hazard" exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

"Imminent hazard."

RELATIONSHIP TO OTHER LAWS

49 USC 1811.

SEC. 112. (a) GENERAL.—Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

(b) STATE LAWS.—Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) OTHER FEDERAL LAWS.—The provisions of this title shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.) or to pipelines which are subject to regulation under chapter 39 of title 18, United States Code.

18 USC 831.

CONFORMING AMENDMENTS

SEC. 113. (a) Section 4472 of title 52 of the Revised Statutes of the United States, as amended (46 U.S.C. 170) is amended—

(1) by inserting, in the first sentence of paragraph (14) thereof, "criminal" before the word "penalty" and "or imprisoned not more than 5 years, or both" before the phrase "for each violation"; and

(2) by adding at the end thereof the following new paragraph:

"(17)(A) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of any provision of this section, or of any regulation issued under this section, shall be liable to the United States for a civil penalty of not more than $10,000 for each day of each violation. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. Penalty.

"(B) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States, in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.".

(b) Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(1)) is amended—

(1) by inserting immediately before the period at the end of the first sentence thereof and inserting in lieu thereof: ", except that the amount of such civil penalty shall not exceed $10,000 for each such violation which relates to the transportation of hazardous materials."; and

(2) by deleting in the second sentence thereof ": *Provided*, That this" and inserting in lieu thereof the following: ". The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This".

(c) Section 902(h) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(h)) is amended to read as follows:

"HAZARDOUS MATERIALS

"(h)(1) In carrying out his responsibilities under this Act, the Secretary of Transportation may exercise the authority vested in him by section 105 of the Hazardous Materials Transportation Act to provide by regulation for the safe transportation of hazardous materials by air. Ante, p. 2157.

"(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other Penalty.

property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this Act. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both.

"(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18, United States Code) or any ammunition therefor.".

(d) Section 6(c)(1) of the Department of Transportation Act (49 U.S.C. 1655(c)(1)) is amended by inserting in the first sentence thereof after "aviation safety" and before "as set forth in" the following: (other than those relating to the transportation, packaging, marking, or description of hazardous materials)".

(e)(1) Section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) is amended by striking out the period at the end thereof and by inserting in lieu thereof "(other than subsection (e)(4)).".

(2) Section 6(f)(3)(B) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(B)) is amended by striking out the period at the end thereof and by inserting in lieu thereof "(other than subsection (e)(4)).".

(f) Subsection (6) of section 4472 of the Revised Statutes, as amended (46 U.S.C. 170(6)), is amended—

(1) in paragraph (a) thereof, by striking out "inflammable" each place it appears and inserting in lieu thereof at each such place "flammable"; by inserting before "liquids" the following: "or combustible"; and by deleting the colon and the proviso in its entirety and by inserting in lieu thereof a period and the following two new sentences: "The provisions of this subsection shall apply to the transportation, carriage, conveyance, storage, stowing, or use on board any passenger vessel of any barrel, drum, or other package containing any flammable or combustible liquid which has a lower flash point than that which is defined as safe pursuant to regulations establishing the defining flash-point criteria for flammable and combustible liquids. Such regulations shall be prescribed, and revised as necessary, by the Secretary of Transportation.".

(2) in paragraph (b) thereof, by striking out in clause (iv) thereof "inflammable liquids" and inserting in lieu thereof "flammable or combustible liquids".

Repeal. (g) The Hazardous Materials Transportation Control Act of 1970 (Pub. L. 91-458, title III; 49 U.S.C. 1761-1762) is repealed.

EFFECTIVE DATE

49 USC 1801 note. SEC. 114. (a) Except as provided in this section, the provisions of this title shall take effect on the date of enactment.

(b)(1) Except as provided in section 108 of this title or paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this title, pursuant to any provision of law amended or repealed by this title, shall continue in effect according to its terms or until repealed, terminated, withdrawn, amended, or modified by the Secretary or a court of competent jurisdiction.

(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this title as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this title, or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this title, unless there is full compliance with the purposes and provisions of this Act and regulations thereunder.

(c) Proceedings pending upon the date of enactment of this title shall not be affected by the provisions of this title and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 115. There are authorized to be appropriated to carry out the provisions of this title not to exceed $7,000,000 for the fiscal year ending June 30, 1976, and not to exceed $1,750,000 for the transition period of July 1, 1976, through September 30, 1976.

* * * * * * *

EXECUTIVE COMMUNICATION 2388

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JAN 22 1976

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

There is transmitted herewith a proposed bill:

"To amend the Hazardous Materials Transportation Act to authorize appropriations, and for other purposes".

This bill would authorize appropriations in the amount of $7,000,000 for fiscal year 1977, and $7,000,000 for fiscal year 1978 for the Department of Transportation's Materials Transportation Bureau to carry out the functions assigned to it with respect to the transportation of hazardous materials under the Hazardous Materials Transportation Act and various other statutes and for the Secretary for other activities carried out pursuant to this Act.

This bill would also make two clarifying amendments to the Hazardous Materials Transportation Act (the Act), which is title I of the Transportation Safety Act of 1974 (P.L. 93-633). The amendment to section 106(c) of the Act proposed in this bill would strike the word "extremely" from that subsection. The Senate-passed version of section 106 limited the registration authority to "extremely" hazardous materials. The committee of conference rejected this limitation and struck the word "extremely" in some parts of section 106, but omitted to strike the word in section 106(c). As that section now stands, "extremely" is not defined and subsection (c) is inconsistent with subsections (a) and (b).

The bill would also amend section 107(a) of the Act, relating to exemptions. The Act provides the Secretary with authority over carriers, shippers, and manufacturers of hazardous materials

containers. The bill would amend the Act to make it clear that the exemption authority also applies to manufacturers and not just to carriers and shippers.

The proposed legislation will not serve to impact adversely the environment nor will it have an inflationary impact on the economy.

The Office of Management and Budget has advised that this proposed legislation is consistent with the Administration's objectives.

Sincerely,

William T. Coleman, Jr.

Enclosures

A BILL

To amend the Hazardous Materials Transportation Act to authorize appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hazardous Materials Transportation Act Amendments of 1976".

SEC. 2. Section 106(c) of the Hazardous Materials Transportation Act (49 U.S.C. 1805(c)) is amended by striking out "extremely" each time it appears.

SEC. 3. Section 107(a) of the Hazardous Materials Transportation Act (49 U.S.C. 1806(a)) is amended by striking out the phrase "transports or causes to be transported or shipped hazardous materials in a manner so as to achieve" and insert in lieu thereof "will provide for".

SEC. 4. The text of section 115 of the Hazardous Materials Transportation Act (49 U.S.C. 1812) is amended to read as follows: "There are authorized to be appropriated for the Materials Transportation Bureau, United States Department of Transportation, to carry out programs relating to the transportation of hazardous materials and for the Secretary for other activities carried out pursuant to this Act not to exceed $7,000,000 for the fiscal year ending September 30, 1977, and not to exceed $7,000,000 for the fiscal year ending September 30, 1978."

SECTION-BY-SECTION ANALYSIS

Section 1 is a short title.

Section 2 would make a clarifying amendment to section 106(c) of the Hazardous Materials Transportation Act by eliminating a term which relates to a Senate bill concept rejected and omitted from the Act by the original committee of conference for the Act. The conference in reporting on the Act deleted several other references to "extremely" hazardous materials. However, the two references in this subsection were apparently overlooked.

Section 3 would amend the Hazardous Materials Transportation Act provision on exemptions to make it clear that eligibility for exemptions from hazardous materials regulations is not limited just to persons who transport or ship hazardous materials. Persons who manufacture, fabricate, mark, maintain, recondition, repair or test packages or containers for use in transportation of hazardous materials are expressly subject to the provisions of the Act pertaining to regulations (section 105(a)), registration (section 106(b)), inspections (section 109(c)), and civil penalties (section 110(a)) the same as persons who transport or ship hazardous materials. This amendment will make the coverage of the exemption section consistent with those provisions.

Section 4 would authorize appropriations in the amount of $7,000,000 for fiscal year 1977, and $7,000,000 for fiscal year 1978 for the Department of Transportation's Materials Transportation Bureau to carry out the functions assigned to it with respect to the transportation of hazardous materials under the Hazardous Materials Transportation Act and various other statutes and for the Secretary for other activities carried out pursuant to this Act.

INDEPENDENT SAFETY BOARD ACT OF 1974

Public Law 93-633
93rd Congress, H. R. 15223
January 3, 1975

An Act

88 STAT. 2156

To regulate commerce by improving the protections afforded the public against risks connected with the transportation of hazardous materials, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Transportation Safety Act of 1974".

Transportation Safety Act of 1974.
49 USC 1801 note.

* * * * * * *

TITLE III—INDEPENDENT SAFETY BOARD

Independent Safety Board Act of 1974.

SHORT TITLE

SEC. 301. This title may be cited as the "Independent Safety Board Act of 1974".

49 USC 1901 note.

FINDINGS

SEC. 302. The Congress finds and declares:

49 USC 1901.

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

49 USC 1654.

(2) Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands

continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

NATIONAL TRANSPORTATION SAFETY BOARD

49 USC 1902.

SEC. 303. (a) ESTABLISHMENT.—The National Transportation Safety Board (hereafter in this title referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975.

Membership.

(b) ORGANIZATION.—(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. At any given time, no less than two members of the Board shall be individuals who have been appointed in the field of accident reconstruction, safety engineering, or transportation safety.

Term.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Individuals serving as members of the National Transportation Safety Board on the date of enactment of this title shall continue to serve as members of the Board until the expiration of their then current term of office. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1976 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this title referred to as the "Chairman"); and

(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or Acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(A) aviation; (B) highway and motor vehicle; (C) railroad and tracked vehicle; and (D) pipeline. The Board shall, in addition, establish and maintain any other such office as is needed, including an office to investigate and report on the safe transportation of hazardous materials.

(c) GENERAL.—(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this title.

GENERAL PROVISIONS

SEC. 304. (a) DUTIES OF BOARD.—The Board shall— 49 USC 1903.

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 6(d) of the Department of Transportation Act (49 U.S.C. 4655(d)) pursuant to title VII of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1441); 49 USC 1655.

(B) highway accident, including any railroad grade crossing accident, that it selects in cooperation with the States;

(C) railroad accident in which there is a fatality, substantial property damage, or which involves a passenger train;

(D) pipeline accident in which there is a fatality or substantial property damage;

(E) major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the department in which the Coast Guard is operating: *Provided*, That any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating; and

(F) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this title.

The Board may request the Secretary of Transportation (hereafter in this title referred to as the "Secretary") to make investigations with regard to such accidents and to report to the Report.

Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

Report; publication in Federal Register.

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and to cause notice of the issuance and availability of such reports to be published in the Federal Register;

Reports to Congress, Federal, State, and local agencies.

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation including human injury avoidance;

(5) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(6) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(7) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies;

(8) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1422, 1429, or 1431(c)); and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239); the Act of July 15, 1954 (46 U.S.C. 239 (a) and (b)); or section 4 of the Great Lakes Pilotage Act (46 U.S.C. 216(b)).

46 USC 239a, 239b. 46 USC 216b.

(b) Powers of Board.—(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may

be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

Inspections.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

Contract authority.

(4) The Board is authorized to enter into, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this title, with any government entity or any person.

Autopsy report.

(5) The Board is authorized to obtain, and shall be furnished, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: *Provided*, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5, United States Code; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I); (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); and (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions.

Budget estimates, transmittal to Congress.

(7) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States

shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(8) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(9) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

Publication in Federal Register.

(10) Establish such rules and regulations as may be necessary to the exercise of its functions.

Rules and regulations.

(c) USE OF REPORTS AS EVIDENCE.—No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

Prohibition.

(d) JUDICIAL REVIEW.—Any order, affirmative or negative, issued by the Board under this title shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon petition filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5, United States Code.

5 USC 701.

ANNUAL REPORT

49 USC 1904.

SEC. 305. The Board shall report to the Congress on July 1 of each year. Such report shall include, but need not be limited to—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the preceding calendar year;

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(3) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State law with responsibility in this field; and

(4) a biennial appraisal and evaluation and review, and recommendations for legislative and administrative action and change, with respect to transportation safety.

PUBLIC ACCESS TO INFORMATION

SEC. 306. (a) GENERAL.—Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to subsection (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public. 49 USC 1905.

(b) EXCEPTION.—The Board shall not disclose information obtained under this title which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed in a manner designed to preserve confidentiality— Information disclosure, prohibition.

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

RESPONSE TO BOARD RECOMMENDATIONS

SEC. 307. Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to— 49 USC 1906.

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost. Publication in Federal Register.

CONFORMING AMENDMENTS

SEC. 308. The Department of Transportation Act is amended—

(1) by deleting section 5 (49 U.S.C. 1654);

(2) by amending section 4(c) thereof (49 U.S.C. 1653(c)) by deleting "or the National Transportation Safety Board" in the first sentence thereof; and by deleting in the second sentence thereof ", the Administrators, or the National Transportation Safety Board." and by inserting in lieu thereof "or the Administrators."; and

(3) by amending section 4(d) thereof (49 U.S.C. 1653(d)) by deleting ", the Administrators, and the National Transportation Safety Board" and by inserting in lieu thereof "and the Administrators".

AUTHORIZATION OF APPROPRIATIONS

49 USC 1907.

SEC. 309. There are authorized to be appropriated for the purposes of this Act not to exceed $12,000,000 for the fiscal year ending June 30, 1975; and $12,000,000 for the fiscal year ending June 30, 1976, such sums to remain available until expended.

Approved January 3, 1975.

EXECUTIVE COMMUNICATION 1948

National Transportation
Safety Board

Washington, D.C. 20594

Office of
Chairman

IDENTICAL LETTER TO BE SENT TO:
Honorable Nelson A. Rockefeller
President of the Senate
Honorable James T. Lynn
Director, Office of Management
and Budget

Honorable Carl Albert
Speaker of the House of
Representatives
Washington, D. C. 20515

Dear Mr. Albert:

The National Transportation Safety Board submits for your consideration and appropriate reference a Statement of Justification and a draft Bill, "The Independent Safety Board Act Amendments of 1975."

This Bill would make one amendment to the Independent Safety Board Act, which is Title III of the Transportation Safety Act of 1974 (P.L. 93-633) and would provide an authorization for FY 1977 and FY 1978 for programs of the National Transportation Safety Board.

Section 306(b) of the Act would be amended by the Bill to provide the Safety Board with statutory authority to withhold from public disclosure, notwithstanding section 552 of Title V of the United States Code relative to freedom of information, and render immune from legal process information obtained by the Board from an aircraft accident investigation conducted by a foreign state, until that state notifies the Board that it has no objection to such disclosure. It has been the practice of the Safety Board, and the Civil Aeronautics Board before it, to limit public disclosure of the aforementioned accident information, and provision therefor has been contained in the regulations of the Safety Board. However, the provisions of the Freedom of Information Act, court decisions thereunder, and a recent court decision made during discovery proceedings in aviation litigation have made it clear that our regulation cannot be sustained.

If the Safety Board cannot maintain the confidentiality of accident information obtained in the course of participation in foreign accident investigations, the Safety Board will be seriously hindered in its ability to initiate and support efforts to prevent future accidents.

Section 309 of the Act provides appropriation authority of $12,000,000 for FY 1975 and FY 1976. The Board's responsibilities with respect to this Act, however, are continuing, in addition to having been expanded, and this Bill would provide an appropriation authorization of $17,300,000 for FY 1977 and $18,500,000 for FY 1978. The appropriation authorization requested in FY 1977 is needed to (1) annualize on a full-year basis the new programs requested in the FY 1976 budget; (2) cover the cost increases in the current Safety Board programs resulting from salary increases, workload growth, and inflation; (3) fund the new programs proposed by the Safety Board for FY 1977; (4) provide the resources necessary for the Board to relocate its headquarters outside of Department of Transportation buildings; and (5) provide for the full-year cost of the October 1975 pay raise. The appropriation authorization requested in FY 1978 is needed to annualize on a full-year basis the new programs proposed for FY 1977 and to cover the cost increases, workload growth, and inflation on the previously approved programs.

The appropriation authorization request for FY 1977 and FY 1978 is the minimum level of effort necessary of the Safety Board to adequately fulfill the intent of the Congress as mandated by the Independent Safety Board Act of 1974.

The Safety Board has determined that this proposed legislation will have no adverse impact on the environment or any inflationary impact on the economy.

We urge the prompt introduction and early enactment of this legislation.

Sincerely yours,

John H. Reed

John H. Reed
Chairman

Enclosures

A Bill

To amend the Independent Safety Board Act of 1974 to authorize additional appropriations and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Independent Safety Board Act Amendments of 1975."

SEC. 2. Section 306(b) of the Independent Safety Board Act of 1974 (49 U.S.C. 1905) is amended by redesignating said section as subsection 306(b)(1) and adding a new subsection 306(b)(2) to read as follows:

"Sec. 306(b)(2). Notwithstanding section 552 of Title V, United States Code, relating to freedom of information, the Board shall prohibit the disclosure of all information obtained from an aircraft accident or incident investigation conducted by a foreign state, in accordance with the Chicago Convention (61 Stat. 1180), and Annex 13 issued thereunder, and in the possession of the Board, personnel thereof designated as a U.S. accredited representative, and advisors to such accredited representatives; Provided, That public disclosure may be made of such information when the state which conducted the investigation has notified the Board in writing that it has no objection to such disclosure. All such information shall be immune to legal process prior to public disclosure by the Board."

SEC. 3. Section 309 of the Independent Safety Board Act of 1974 (49 U.S.C. 1907) is amended by adding at the end thereof the following new sentence:

"There are authorized to be appropriated for the purpose of this Act not to exceed $17,300,000 for the fiscal year ending September 30, 1977, and $18,500,000 for the fiscal year ending September 30, 1978, such sums to remain available until expended."

STATEMENT OF JUSTIFICATION

Section 306(b). This proposed amendment would prohibit disclosure by the Safety Board of information obtained by the Board, its personnel when designated U.S. accredited representatives, and advisors to such representatives, from an aircraft accident conducted by a foreign state, until that state notifies the Board, in writing, that it has no objection to such disclosure.

Information obtained by the Safety Board from foreign accident investigations is sensitive and requires protection from public disclosure prior to approval being given by the foreign state. Under the Chicago Convention (61 Stat. 1180) to which the United States is a signator, and Annex 13 issued thereunder, the state in which the accident occurs has the responsibility for the investigation of an accident. The states of registry and manufacturer are accorded the privilege of participating in such investigations. Under present practices we are provided accident information by the foreign government with the proviso that such information not be released until that state has completed its investigation and indicates no objection to public disclosure.

The United States, as the world's major aircraft producing company, must be an active participant in accident investigations being conducted around the world involving U. S. registered and manufactured aircraft. The ability to preserve the confidentiality of information obtained from foreign investigations until such investigations are completed is vital to such participation. Without the ability to honor requests for confidentiality by foreign states, the participation by Safety Board personnel as accredited U. S. representatives and advisors in foreign accident investigations may be seriously compromised, or in the alternative, it may become impossible for our representatives to be furnished documents needed by the Safety Board in fulfilling its responsibility to seek action to prevent future accidents, based on information obtained from investigations conducted by foreign states.

Section 309. The Independent Safety Board Act of 1974 provided the Safety Board with expanded new authorities and responsibilities. This new Act also placed an appropriation authorization on the Safety Board of $12,000,000 for FY 1975 and FY 1976. To adequately accomplish its authorities and responsibilities under the new Act the Board will require $17,300,000 for FY 1977 and $18,500,000 for FY 1978.

The requested increase, of $5,300,000, in appropriation authorization in FY 1977, is needed for:

1. Annualization of FY 1976 Budget Programs. The Safety Board requested 118 additional positions in the FY 1976 budget and budget amendment at a cost of $1,800,000 for salaries and associated expenses. Funding for these positions in the FY 1976 budgets was requested on a half-year basis only. Accordingly, after eliminating one-time only purchases, an additional $1,400,000 in authorization authority will be needed to fund the requested FY 1976 positions for the other half-year.

2. Salary, Workload, and Inflationary Increases in Current Programs. The Safety Board will require an additional $600,000 in authorization authority in FY 1977 for maintaining the currently authorized programs as follows: annualizing pay and within-grade increases, funding promotions and new within-grade increases and an additional day's pay, financing additional costs of an approximate 5 percent growth in Safety Board workload, and funding the increased cost of purchasing necessary goods and services due to inflation.

3. New FY 1977 Programs. In FY 1977 the Safety Board is requesting an increase in its current programs, primarily in the aviation area, to adequately accomplish the intent of the Congress as stated in the Independent Safety Board Act of 1974. In the FY 1976 budget amendment the Safety Board could only request the resources necessary to accomplish the expanded surface accident investigation responsibilities as mandated in the new Act, due to the constraints of a $12,000,000 authorization. Accordingly, in FY 1977, the Safety Board is requesting the additional resources necessary to accomplish the Safety Board's other responsibilities as intended by the Congress.

In the surface area the additional programs proposed for FY 1977 are: improved evaluation and follow-up on Safety Board recommendations; publication of accident investigation guidance; and analyzing crash injury problems to minimize human injuries from transportation accidents.

In the aviation area the additional programs proposed for FY 1977 are: withdrawal of the request for accident investigation by the FAA to provide for more thorough investigations and analyses of aviation accident causation; increased emphasis on general aviation accidents where most of the accidents and fatalities are occurring; expanded review and analysis of the rulemaking activities of the FAA; and increased participation in the foreign aviation accident investigations of U. S. products and operations as a result of new rules issued by the International Civil Aviation Organization. These new FY 1977 programs will require an additional $2,000,000 in authorization authority in FY 1977.

4. Relocation of Washington Headquarters. The Washington headquarters is currently housed in two separate DOT buildings and further separation of the Safety Board staff will be necessary if the staffing requested in FY 1976 and proposed for FY 1977 are approved. To improve the management efficiency of the Safety Board, all headquarters personnel should be housed in one location, particularly because of the Safety Board's relatively small size. In addition, housing the Safety Board in DOT buildings gives the appearance to the public that the Safety Board is not in fact independent. The DOT now provides the Safety Board with certain support services which will be terminated when the Safety Board moves out of DOT managed buildings. Most of these terminated services will be contracted from commercial services or other government agencies; however, additional equipment will be needed to provide support that would be impractical to obtain through contract. Accordingly, an additional $700,000 in authorization authority is needed in FY 1977 for moving, space renovation, equipment, and additional support services.

5. FY 1976 Pay Raise. A pay raise of 5 percent is effective in October 1975 for all government employees. This pay raise will substantially increase the FY 1977 requirements of the Safety Board since more than 70 percent of the Safety Board's resources are devoted to salaries and benefits. Accordingly, $600,000 in additional authorization authority will be needed in FY 1977 as a result of the FY 1975 pay raise.

The requested increase, of $1,200,000, in appropriation authorization in FY 1978, is needed for:

1. Annualization of FY 1977 Proposed Programs. The Safety Board's proposed budget for FY 1977 includes a request for 111 additional positions at a cost of $2,000,000 for salaries and associated expenses. Funding for the additional positions will be requested on a half-year basis in FY 1977. Accordingly, after eliminating one-time-only purchases, an additional $1,300,000 in authorization authority will be needed to fund the proposed FY 1977 positions for the other half-year.

2. Salary, Workload, and Inflationary Increases In Current Programs. The Safety Board will require an additional $600,000 in authorization authority in FY 1978 for maintaining the currently authorized programs as follows: annualizing pay and within-grade increases, funding promotions and new within-grade increases, financing additional costs of an approximate 5 percent growth in Safety Board workload, and funding the increased cost of purchasing necessary goods and services due to inflation.

The above two increase items totaling $1,900,000 will be offset by a decrease of $700,000 for the one-time-only moving, space renovation, and equipment costs associated with the relocation of the Washington headquarters in FY 1977.

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